

**pmcnevin@cox.net**

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**From:** pmcnevin@cox.net  
**Sent:** Tuesday, July 26, 2005 1:04 PM  
**To:** gblume@blumelawfirm.com  
**Cc:** janwallace@att.net  
**Subject:** David Leeper Complaint Revisios  
**Attachments:** COMPLAINT[1].rtf

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Gary,

Attached is the complaint file with my revisions.

Also, please file necessary documents today with the Real Estate Board regarding the Wallace purchase agreement for 75th and Thunderbird property.

The purchase agreement was modified and signed by Leeper without Jan's knowledge or approval.

Regards,

Patrick

## Full Message Headers

Received: from fed1rmmtao09.cox.net ([68.230.241.30])  
by worldnet.att.net (mtiwmxc11) with ESMTP  
id <2005072617042601100s6fa9e>; Tue, 26 Jul 2005 17:04:26 +0000  
X-Originating-IP: [68.230.241.30]  
Received: from smtp.west.cox.net ([172.18.180.54]) by fed1rmmtao09.cox.net  
(InterMail vM.6.01.04.00 201-2131-118-20041027) with SMTP  
id <20050726170426.IRAL7275.fed1rmmtao09.cox.net@smtp.west.cox.net>;  
Tue, 26 Jul 2005 13:04:26 -0400  
X-Mailer: Openwave WebEngine, version 2.8.15 (webedge20-101-1103-20040528)  
From: <pmcnevin@cox.net>  
To: <gblume@blumelawfirm.com>  
CC: <janwallace@att.net>  
Subject: David Leeper Complaint Revisios  
Date: Tue, 26 Jul 2005 13:04:25 -0400  
Message-Id: <20050726170426.IRAL7275.fed1rmmtao09.cox.net@smtp.west.cox.net>  
Status: RO  
MIME-Version: 1.0  
Content-Type: multipart/mixed;  
boundary="--boundary-LibPST-iamunique-1136559753\_-\_-"

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11801 North Tatum Boulevard, Suite 124  
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**Gary R. Blume**  
**Arizona Bar No. 014736**  
**BLUME LAW FIRM, P.C.**  
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**Phoenix, Arizona 85028-1612**  
**Telephone: (602) 494-7976**  
**Telefax: (602) 494-7313**  
**email: [gblume@blumelawfirm.com](mailto:gblume@blumelawfirm.com)**  
**Attorney for Plaintiffs**

**SUPERIOR COURT OF ARIZONA**  
**MARICOPA COUNTY**

|                                       |   |                  |
|---------------------------------------|---|------------------|
| JAN WALLACE and PATRICK MCNEVIN,      | ) | No. CV _____     |
| Plaintiffs,                           | ) |                  |
|                                       | ) |                  |
| v.                                    | ) |                  |
|                                       | ) | <b>COMPLAINT</b> |
| DAVID LEEPER and JANE DOE LEEPER, and | ) |                  |
| MARK HUGHES and JANE DOE HUGHES,      | ) |                  |
| Defendants.                           | ) |                  |
|                                       | ) |                  |
|                                       | ) |                  |

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Plaintiffs, Jan Wallace and Patrick McNevin, by and through their attorney, Blume Law Firm, P.C., for their Complaint against the Defendant allege as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. That the Plaintiff, Jan Wallace is a single person (hereinafter "Wallace") and a resident of Maricopa County.
2. That the Plaintiff, Patrick McNevin is a single person (hereinafter "McNevin") and a resident of Maricopa County.
3. That the Defendant, David Leeper (hereinafter "Leeper"), upon information and belief, is a **divorced** man, and that the defendant caused events to occur in Maricopa County, Arizona, upon which Plaintiff's claims are based.
4. That all activities occurred for the benefit of the marital community and that Jane Doe Leeper benefited from the conduct of David Leeper.
5. This Court has jurisdiction over the claims herein pursuant to Article VI,

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Section 14 of the Arizona Constitution, and A.R.S. §12-123.

Venue in this Court is appropriate under A.R.S. §12-401.

## **GENERAL ALLEGATIONS**

7. David Leeper, Alan Andres and Patrick McNevin worked together with Chaleviox Land Acquisitons, Inc. (CLA) to develop real estate projects. Patrick McNevin was also in charge of land acquisition for Charlevoix Homes, Inc.

8. Jan Wallace was President of SDI in Newport California (SDI) and also interested in real estate development.

9. Jan Wallace, David Leeper and Patrick McNevin formed Western Investments Partners, LLC (WIP) to begin developing real estate in Arizona.

10. Prior to entering into a deal with WIP, Wallace and Leeper bought a residence for \$120,000.00 and sold it for \$200,000.00 dividing the profit.

11. A new opportunity came up at 75th and Thunderbird for Wallace, Leeper and McNevin to purchase the property and resell it. A purchase contract was entered into to allow WIP to purchase the property. WIP found a buyer, Vern Crow and was planning on purchasing the property and reselling it to Vern Crow for a profit. Mark Hughes was representing the seller of the property, World Mission, as their attorney. Leeper signed Wallaces' signature to the purchase agreement and listed a \$25,000.00 commission without Wallace's approval.

12. Another project, at Citrus in Glendale was obtained by WIP with Wallace, Leeper and McNevin planning to purchase the property for \$3.2M and selling the property for \$3.8M. to Charlevoix Land Acquisitions.

13. Mike Roberts, officer of CLA approached Leeper, McNevin and Alan Andrus claiming he could resell the property for \$4.9M.

14. Leeper requires Mike Roberts to make an earnest payment of \$100,000.00 to open the escrow and complete the buy agreement. Leeper establishes a short deadline and defaults Roberts claiming that the deal is now dead and no sale will occur. Leeper, unknown to Wallace and McNevin, has been in contact with Mark Hughes and arranged to sell the property without Wallace, McNevin, WIP or Roberts. Hughes and Leeper agree to divide the proceeds of the second sale. Hughes arranges the sale of the property to go through two

escrows. The first is the sale Hughes acts as buyer from family trust. The second escrow is to the actual buyer that the Family trust knows nothing about, to Bruce Johnson for \$4,000,000.00.

Attached as Exhibit 1 is a letter from Mark Hughes to Jan Wallace dated July 21, 2005 wherein he states: he received \$288,832.90 from the transaction and sent Leeper \$120,389.54 from the sale. He also claims that Leeper promised an additional \$200,000.00 from Bruce Johnson when Leeper resells the property for Bruce Johnson for \$5,200,000.00.

To provide for the sale of the property without the knowledge of Wallace, Leeper claims that because Roberts failed to deliver earnest deposit of \$100,000.00 on time, an unknown buyer (back-up offer) is accepted by Mark Hughes, the seller. Leeper states to McNevin, Wallace and Alan Andrus that the deal is gone, and that he does not know who the new buyer is. Leeper claims that WIP made no money because Roberts did not deliver the earnest funds on time allowing the back-up offer to take the property.

Leeper then delivered the new buyer, Bruce Johnson, to Mark Hughes. Leeper reset the time clock with the seller Mark Hughes and did not inform Wallace, McNevin, Alan Andrus or WIP of the new buyer. Mark Hughes double-escrowed the property with the family trust and Bruce Johnson on May 9, 2005. Leeper and Hughes split an equity gain of \$600,000.00. McNevin, Wallace and Leeper were still partners on the property even though Roberts did not perform.

**CAUSES OF ACTION  
COUNT ONE  
BREACH OF CONTRACT**

Plaintiff incorporates by reference the preceding allegations as if fully set forth

The agreement of the partners constitutes a valid contract enforceable by Plaintiffs against Defendant.

19. Plaintiffs have performed all conditions precedent, if any, necessary for

recovery upon this claim.

Defendant breached the parties contract by, among other things, failing to make the payments required by the note.

As a result of Defendant's breach of contract, Plaintiff has incurred damages in an amount of not less than \$\_\_\_\_\_, which damages continue to accrue.

Because this matter arises out of a contract, Plaintiff is entitled to recover his reasonable attorneys' fees against Defendant pursuant to A.R.S. §12-341.01.

**COUNT TWO**  
**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

Plaintiff incorporates by reference the preceding allegations as if fully set forth.

Implicit in all contracts is a covenant of good faith and fair dealing between the parties.

Pursuant to Defendant's covenant of good faith and fair dealing arising from the partnership agreement, Defendant owed Plaintiff a duty to refrain from acting in any way to impair the rights of Plaintiff to receive the benefits allowing from the partnership.

Due to the acts as set forth herein, Defendant breached its duty of good faith and fair dealing arising from the note.

As a result of Defendant's breach of its duty of good faith and fair dealing, Plaintiff has incurred damages of not less than \$\_\_\_\_\_.

Because this matter arises out of a contract, Plaintiff is entitled to recover his reasonable attorneys' fees against Defendant pursuant to A.R.S. §12-341.01.

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**COUNT THREE  
UNJUST ENRICHMENT**

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29. Plaintiff incorporates by reference the preceding allegations as if fully set  
forth. 7

30. By receiving funds and failing and refusing to pay Plaintiff the amounts due  
and owing according to the partnership agreement, Defendant has received a substantial  
benefit and been enriched. 10

31. By providing Defendant with funds and not having received any payments  
under the partnership agreement, Plaintiff has suffered an impoverishment. 12

32. The enrichment of Defendant has resulted in the impoverishment of Plaintiff,  
and such condition lacks any reasonable justification. 14

33. In the event Counts One and Two of the Complaint are unsuccessful, Plaintiff  
will have been deprived of an adequate legal remedy for his impoverishment. 16

34. Defendant has been unjustly enriched because it has retained funds which in  
justice and equity belong to Plaintiff. 18

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**COUNT FOUR  
TORTIOUS INTERFERENCE**

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**COUNT FIVE  
FRAUD**

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**COUNT SIX  
MISREPRESENTATION**

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**COUNT SEVEN**

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29. Plaintiff incorporates by reference the preceding allegations as if fully set  
forth. 27

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**DEMAND FOR JURY TRIAL**

30. Plaintiff hereby requests a trial by jury.

**PRAYER FOR RELIEF**



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**WHEREFORE**, Plaintiffs pray for and demands judgment against the Defendant as

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follows:

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1. For actual damages in an amount to be proven at trial.

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2. For pBLUME LAW FIRM, P.C.

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Conjunctive damages

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3. For its costs and attorneys' fees incurred in the subsequent enforcement of the

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judgment against the Defendant herein prayed, all as may be established to the Court after the

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date of judgment; and

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4. For reasonable attorneys fees in the amount of \$\_\_ in the event that a default

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judgment is entered in this matter pursuant to Rule 55(b), Arizona Rules of Civil Procedure;

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5. For such other and further relief as the Court may deem just and proper.

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6. This action arises out of a contract and plaintiff is entitled to recover its reasonable

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attorneys' fees herein, pursuant to A.R.S. §12-341.01.

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**DATED** this \_\_\_\_ day of \_\_\_\_, 2005.

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**BLUME LAW FIRM, P.C.**

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\_\_\_\_\_  
Gary R. Blume, Esq.  
11801 North Tatum Boulevard, Suite 124  
Phoenix, Arizona 85028  
Attorney for the Plaintiff

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- 8 -

**VERIFICATION**

**STATE OF ARIZONA**

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ss.

**County of Maricopa**

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I, Jan Wallace, being first duly sworn upon my oath state as follows: I am a Plaintiff

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in the above entitled action; I have read and fully reviewed the foregoing Complaint and

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believe it to be true and correct to the best of my knowledge.

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\_\_\_\_\_  
Jan Wallace

**SUBSBLUME LAW FIRM, P.C.**

1801 North Tatum Boulevard, Suite 124

Phoenix, Arizona 85028-1612

(602) 494-7976

**CRIBED AND SWORN** to before me this \_\_\_\_ day of \_\_\_, 2005, by Jan Wallace.

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\_\_\_\_\_  
Notary Public

My Commission Expires:

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**STATE OF ARIZONA**

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ss.

**County of Maricopa**

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I, Patrick McNevin, being first duly sworn upon my oath state as follows: I am a

Plaintiff in the above entitled action; I have read and fully reviewed the foregoing Complaint

and believe it to be true and correct to the best of my knowledge.

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\_\_\_\_\_  
Patrick McNevin

**SUBSBLUME LAW FIRM, P.C.**

1801 North Tatum Boulevard, Suite 124

Phoenix, Arizona 85028-1612

(602) 494-7976

**CRIBED AND SWORN** to before me this \_\_\_\_ day of \_\_\_, 2005, by Patrick McNevin.

\_\_\_\_\_  
Notary Public

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- 9 -

My Commission Expires:

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